

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
06 DHC 35

THE NORTH CAROLINA STATE BAR,)
)
 Plaintiff,)
)
 V.)
)
MICHAEL B. NIFONG, Attorney,)
)
 Defendant.)
_____) H E A R I N G

June 16, 2007

Excerpt Transcript
Findings of Fact and Conclusions of Law
Order of Discipline
Third Floor Courtroom
Court of Appeals Building
One West Morgan Street
Raleigh, North Carolina

HEARING PANEL:

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1 F I N D I N G S O F F A C T
2 A N D C O N C L U S I O N S O F L A W

3 THE CHAIRMAN: The Hearing Committee has
4 deliberated and has reached a unanimous conclusion
5 as to each of the contested issues that have been
6 submitted by the parties.

7 What I'm going to do is to read each of
8 the contested issues that are listed in the
9 Pre-trial Order, and then to indicate "yes" or
10 "no," and in some cases with some explanation, but
11 generally without any further elaboration. We'll
12 have further elaboration at the conclusion of
13 Phase Two as to certain matters.

14 And bear in mind that there are 19
15 issues, some of which are duplicative and some of
16 which reflect that there were amendments to the
17 applicable rules during the period we are talking
18 about, so that you'll hear what sounds like pretty
19 much the same thing.

20 A "yes" will signify that we have found
21 the issue to be proved by clear, cogent and
22 convincing evidence, which is the standard of
23 proof applicable to the Bar's allegation.

24 A "no" simply means that there has been a
25 failure or an absence of proof to the standard of

1 clear, cogent and convincing evidence.

2 The first issue reads as follows:

3 "Did Defendant make extrajudicial
4 statements to or in the presence of
5 representatives of the news media, including
6 those set forth in paragraphs 12 through 177
7 of the Amended Complaint?" Yes.

8 Two: "Did Defendant know or should
9 Defendant reasonably have known that his
10 extrajudicial statements set forth in
11 paragraphs 12 through 177 of the Amended
12 Complaint would be disseminated by means of
13 public communication?" Yes.

14 "Did Defendant know or should Defendant
15 reasonably have known that his extrajudicial
16 statements set forth in paragraphs 12 through
17 177 of the Amended Complaint would have a
18 substantial likelihood of materially
19 prejudicing an adjudicative proceeding in the
20 matter in violation of Rule 3.6(a)?" Yes.

21 Four: "Did Defendant's extrajudicial
22 statements set forth in paragraphs 12 through
23 177 of the Amended Complaint have a
24 substantial likelihood of heightening public
25 condemnation of the accused in violation of

1 Rule 3.8(f) of the Revised Rules of
2 Professional Conduct?" Yes, with this further
3 note of explanation. It will be necessary
4 for us to have a finding, I believe, that
5 the accused in this instance includes the set
6 of suspects, that being the lacrosse players
7 that were at the house on the night in
8 question. It is not necessary for us to make
9 a finding as a legal matter that they were
10 actually indicted or criminal defendants at
11 the time.

12 Five: "By making misleading statements to
13 or in the presence of representatives of the
14 news media did Defendant engage in conduct
15 involving dishonesty, fraud, deceit or
16 misrepresentation in violation of Rule 8.4(c)
17 of the Revised Rules of Professional Conduct?"
18 No. A word of explanation there. The one
19 statement at issue there involving whether or
20 not condoms might be involved is to our mind
21 no worse than certain others that were not
22 alleged to involve dishonesty, fraud, deceit
23 or misrepresentation in violation of Rule
24 8.4(c); for instance, the statement to the
25 effect that the accused were not cooperating.

1 And since it was not alleged that those
2 statements involved an 8.4(c) violation, we
3 do not think it is appropriate to pick out
4 this particular one and say that it is.
5 Although we have the option as a matter of
6 law of finding some of the other statements
7 to also include a Rule 8.4(c) violation, we
8 decline to do so.

9 Number Six: "Did Defendant by not
10 providing to the Duke defendants prior to
11 November 16, 2006, a complete report setting
12 forth the results of all tests or examinations
13 conducted by DSI, including the potentially
14 exculpatory DNA test results and evidence, a,
15 fail to make timely disclosure to the Defense
16 of all evidence or information known to him
17 that tended to negate the guilt of the accused
18 in violation of former Rule 3.8(d) of the
19 Revised Rules of Professional Conduct?" Yes.
20 "B"--cell phones off--"B, failed to make a
21 reasonably diligent effort to comply with a
22 legally proper discovery request in violation
23 of former Rule 3.4(d) of the Revised Rules of
24 Professional Conduct?" Yes.

25 "Did Defendant by not providing to the

1 Duke defendants prior to November 16, 2006,
2 memorializations of Dr. Meehan's oral
3 statements concerning the results of all
4 examinations and tests conducted by DSI in
5 written, recorded or any other form, a, fail
6 to make timely disclosure to the Defense of
7 all evidence or information known to him that
8 tended to negate the guilt of the accused in
9 violation of former Rule 3.8(d) of the Revised
10 Rules of Professional Conduct?" The answer is
11 yes, with the proviso that the way that issue
12 number 7 is worded with the word
13 "memorializations" tends to imply that the
14 violation is premised on violation of the
15 Discovery Statute, rather than 3.8(d). We
16 think for purposes of issue 7a it may be more
17 appropriate to call that "communication in any
18 form of Dr. Meehan's oral statements," and not
19 just say "memorializations." "B, 7b, failed
20 to make a reasonably diligent effort to comply
21 with a legally proper discovery request, in
22 violation of former Rule 3.4(d) of the Revised
23 Rules of Professional Conduct?" That answer
24 is no, based upon the converse of the
25 distinction in "a;" that is, to the extent

1 that that is based upon compliance with the
2 Discovery Statue. At the time, there was
3 evidence that the Attorney General took the
4 position that prosecutors did not have to
5 provide such memorializations, and therefore
6 there is a plausible reliance by the
7 Defendant upon that position at the time,
8 which is no longer the law, of the Attorney
9 General. And that is the basis for saying no
10 to 7b.

11 Eight: "Did Defendant by not providing
12 to the Duke defendants after November 16,
13 2006, a complete report setting forth the
14 results of all tests or examinations
15 conducted by DSI, including the potentially
16 exculpatory DNA test results in evidence, a,
17 fail after a reasonably diligent inquiry to
18 make timely disclosure to the Defense of all
19 evidence or information required to be
20 disclosed by applicable law, rules of
21 procedure or court opinions, including all
22 evidence or information known to him that
23 tended to negate the guilt of the accused in
24 violation of current Rule 3.8(d) of the
25 Revised Rules of Professional Conduct?" The

1 answer is yes. "B, failed to disclose
2 evidence or information that he knew or
3 reasonably should have known was subject to
4 disclosure under applicable law, rules of
5 procedure or evidence or court opinions in
6 violation of current Rule 3.4(d)(3) of the
7 Revised Rules of Professional Conduct?" The
8 answer is yes.

9 Nine: "Did Defendant not providing to
10 the Duke defendants after November 16, 2006,
11 memorializations of Dr. Meehan's oral
12 statements concerning the results of all
13 examinations and tests conducted by DSI in
14 written, recorded or any other form, a, fail
15 after a reasonably diligent inquiry to make
16 timely disclosure to the Defense of all
17 evidence or information required to be
18 disclosed by applicable law, rules of
19 procedure or court opinions, including all
20 evidence or information known to him that
21 tended to negate the guilt of the accused in
22 violation of current Rule 3.8(d) of the
23 Revised Rules of Professional Conduct?" The
24 answer is yes. "B, failed to disclose
25 evidence or information that he knew or

1 reasonably should have known was subject to
2 disclosure under applicable law, rules of
3 procedure or evidence or court opinion in
4 violation of current Rule 3.4(d)(3) of the
5 Revised Rules of Professional Conduct?" The
6 answer is yes.

7 Number Ten: "Did Defendant by
8 instructing Dr. Meehan to prepare a report
9 containing positive matches, a, knowingly
10 disobey an obligation under the rules of a
11 tribunal in violation of Rule 3.4(c) of the
12 Revised Rules of Professional Conduct?" The
13 answer is yes. "B, request a person other
14 than a client to refrain from voluntarily
15 giving relevant information to another party
16 in violation of Rule 3.4(f) of the Revised
17 Rules of Professional Conduct?" That answer
18 is no.

19 Eleven: "Did Defendant by representing
20 to the Court that he had provided all
21 potentially exculpatory evidence, a, make
22 false statements of material fact or law to a
23 tribunal in violation of Rule 3.3(a)(1)?"
24 The answer is yes. "B, engage in conduct
25 involving dishonesty, fraud, deceit or

1 misrepresentation in violation of Rule 8.4(c)
2 of the Revised Rules of Professional
3 Conduct?" The answer is yes.

4 Twelve: "Did Defendant by representing
5 to opposing counsel that he had provided all
6 potentially exculpatory evidence, a, make
7 false statements of material fact to a third
8 person in the course of representing a client
9 in violation of Rule 4.1?" The answer is yes.
10 "B, engage in conduct involving dishonesty,
11 fraud, deceit or misrepresentation in
12 violation of Rule 8.4(c) of the Revised Rules
13 of Professional Conduct?" The answer is yes.

14 Thirteen: "Did Defendant by representing
15 to the Court that the substance of all Dr.
16 Meehan's oral statements to him concerning the
17 results of all examinations and tests
18 conducted by DSI were included in DSI's
19 report, a, make false statements of material
20 fact or law to a tribunal in violation of
21 Rule 3.3(a)(1)?" The answer is yes. "B,
22 engage in conduct involving dishonesty,
23 fraud, deceit or misrepresentation in
24 violation of Rule 8.4(c) of the Revised Rules
25 of Professional Conduct?" The answer is yes.

1 Fourteen: "Did Defendant by representing
2 to opposing counsel that the substance of all
3 Dr. Meehan's oral statements to him concerning
4 the results of all examinations and tests
5 conducted by DSI were included in DSI's
6 report, a, make false statements of material
7 fact to a third person in the course of
8 representing a client in violation of Rule
9 4.1?" Yes. "B, engage in conduct involving
10 dishonesty, fraud, deceit or
11 misrepresentation in violation of Rule 8.4(c)
12 of the Revised Rules of Professional
13 Conduct?" The answer is yes.

14 Fifteen: "Did Defendant by representing
15 or implying to the Court at the beginning of
16 the December 15, 2006, hearing that he was not
17 aware of the potentially exculpatory DNA
18 results or alternatively was not aware of
19 their exclusion from DSI's report, a, make
20 false statements of material fact or law to a
21 tribunal in violation of Rule 3.3(a)(1)?" The
22 answer is yes. "B, engage in conduct
23 involving dishonesty, fraud, deceit or
24 misrepresentation in violation of Rule 8.4(c)
25 of the Revised Rules of Professional

1 Conduct?" The answer is yes.

2 "Did Defendant by representing to the
3 Grievance Committee of the State Bar that the
4 agreement with Brian Meehan to limit the
5 information in DSI's report was based on
6 privacy concerns of releasing the names and
7 DNA profiles of individuals providing known
8 reference specimens, a, knowingly make a false
9 statement of material fact in connection with
10 a disciplinary matter in violation of Rule
11 8.1(a)?" The answer is no. "B, engage in
12 conduct involving dishonesty, fraud, deceit or
13 misrepresentation in violation of Rule
14 8.4(c)?" The answer is no.

15 Seventeen: "Did Defendant by representing
16 to the Grievance Committee of The State Bar
17 that he did not realize that the potentially
18 exculpatory DNA test results were not included
19 in DSI's report when he provided it to the
20 Duke defendants or thereafter, a, knowingly
21 make a false statement of material fact in
22 connection with a disciplinary matter in
23 violation of Rule 8.1(a)?" The answer is
24 yes. "B, engage in conduct involving
25 dishonesty, fraud, deceit or

1 misrepresentation in violation of Rule
2 8.4(c)?" The answer is yes.

3 Eighteen: "Did Defendant by representing
4 to the Grievance Committee of the State Bar
5 that his statements to the Court at the
6 beginning of the December 15 hearing referred
7 not to the existence of the potentially
8 exculpatory DNA test results but to the Duke
9 defendants' purported allegation that an
10 intentional attempt had been made to conceal
11 such evidence, a, knowingly make false
12 statements of a material fact in connection
13 with a disciplinary matter in violation of
14 Rule 8.1(a)?" The answer is yes. "B, engage
15 in conduct involving dishonesty, fraud,
16 deceit or misrepresentation in violation of
17 Rule 8.4(c)?" The answer is yes.

18 Here I wish to note the consensus of the
19 Hearing Committee in regard to those issues that I
20 have just read involving misrepresentations by the
21 Defendant in his response to the Grievance
22 Committee, we have some concern that those charges
23 more or less as a matter of policy are perhaps not
24 warranted from the standpoint that we have
25 concerns that it is very rare that persons are

1 charged with making false statements to the
2 Grievance Committee in their responses, and that
3 if defendants are charged with that, it may have a
4 chilling effect upon defendants or respondents
5 making a full and complete disclosure to Grievance
6 Committee complaints if they are afraid that,
7 well, if you just disagree with what I tell you,
8 and that if we go to trial and I lose, then by
9 necessity I have misrepresented something to you,
10 that that is perhaps unwise as a matter of a
11 policy. Nevertheless, it is alleged here, and we
12 do find that in certain instances there were
13 violations. But we would simply note that in this
14 particular case it may be at least in our view
15 something of an instance of overcharging.

16 Nineteen: "Did Defendant through one of
17 more of the above violations engage in conduct
18 prejudicial to the administration of justice
19 in violation of Rule 8.4(d)?" The answer is
20 yes.

21 At the conclusion of Phase Two, we will
22 provide certain additional reasoning for our
23 findings and overall conclusions and, of course,
24 as to the discipline imposed.

25 Looking forward to the conclusion of the

1 proceedings, what we will do is, as we normally do,
2 ask Counsel for the State Bar to prepare a
3 proposed written order for us and to provide that
4 to the Defendant's counsel for their review and
5 submission to us. And, of course, we may make and
6 probably will make a number of changes to it.

7 I'm saying that now so we don't have to
8 go over that again.

9 At this time we'll go into Phase Two.

10 (End of excerpt portion of transcript,
11 Findings of Fact and Conclusions of Law.)

12 O R D E R O F D I S C I P L I N E

13 THE CHAIRMAN: Thank you for your
14 patience.

15 The Hearing Committee has deliberated,
16 and we are in unanimous agreement that there is no
17 discipline short of disbarment that would be
18 appropriate in this case given the magnitude of
19 the offenses that we have found and the effect
20 upon the profession and the public.

21 I do want to make some remarks as to why
22 we reached that conclusion.

23 This matter has been a fiasco. There is
24 no doubt about it. It has been a fiasco for a
25 number of people, starting with the defendants,

1 and moving out from there to the justice system in
2 general.

3 We've heard evidence over the last
4 several days of how that came about, and we are
5 lawyers and a school administrator. We're not
6 psychologists. You have to ask yourself why, why
7 did we get to the place that we got?

8 It seems that at the root of it is self-
9 deception arising out of self-interest. Mark
10 Twain said that "when a person cannot deceive
11 himself, the chances are against his being able to
12 deceive other people." And what we have here, it
13 seems, is that we had a prosecutor who was faced
14 with a very unusual situation, in which the
15 confluence of his self-interest collided with a
16 very volatile mix of race, sex and class, a
17 situation that if it were applied in a John
18 Grisham novel would be considered to be perhaps
19 too contrived. And at that time he was facing a
20 primary, and, yes, he was politically naive. But
21 we can draw no other conclusion but that those
22 initial statements that he made were to further
23 his political ambition. And having once done
24 that, and having seen the facts as he hoped they
25 would be, in his mind the facts remained that way

1 in the face of developing evidence that that was
2 not in fact the case.

3 And even today, one must say that in the
4 face of a declaration of innocence by the Attorney
5 General of North Carolina, it appears the
6 Defendant still believes the facts to be one way
7 and the world now knows that is not the case.

8 We are required under our rules to
9 consider certain aggravating and mitigating
10 factors under Rule .0114(w), and those are set
11 forth in the Rule, and I'm going to say what
12 aggravating and mitigating factors we have found.

13 We have found as aggravating factors
14 dishonest or selfish motive; a pattern of
15 misconduct; multiple offenses; refusal to
16 acknowledge wrongful nature of conduct in the
17 respect of the handling of the DNA evidence. We
18 do find that he has made some acknowledgement of
19 his wrongful conduct in regards to the pre-trial
20 statements. The vulnerability of the victim, or
21 the victims in this case, and primarily the
22 victims are the three young men who were
23 wrongfully charged. And we find also as an
24 aggravating factor substantial experience in the
25 practice of law.

1 As mitigating factors we find absence of
2 a prior disciplinary record and reputation for
3 character.

4 We expressly find that the aggravating
5 factors outweigh the mitigating factors.

6 This matter appears to be an aberration
7 in a couple of respects. It appears to be an
8 aberration in the life and career of Michael
9 Nifong. It appears also to be an aberration in
10 the way justice is handled in North Carolina.
11 It's an illustration of the fact that character,
12 good character, is not a constant. Character is
13 dependent upon the situation. And probably any
14 one of us could be faced with a situation at some
15 point that would test our good character and we
16 would prove wanting, and that has happened for
17 Mike Nifong.

18 But the fact that it has happened and
19 the fact that we have found dishonesty and
20 deceitful conduct requires us in the interest of
21 the protection of the public to enter the most
22 severe sanction that we can enter, which is
23 disbarment.

24 I want to say something about who the
25 victims are here. The victims are the three young

1 men to start with, their families, the entire
2 lacrosse team and their coach, Duke University,
3 the justice system in North Carolina and
4 elsewhere. And indeed, prosecutors, honest,
5 ethical, hardworking prosecutors throughout the
6 Nation, as we've heard through anecdotal evidence,
7 are victims of this conduct. And in particular,
8 the justice system is a victim of the way this was
9 taken out of, as Mr. Smith testified, taken out of
10 the courtroom and put in the hands of the public.
11 And not only the public in general, but into a
12 media frenzy unprecedented in anyone's experience.

13 As I think anyone who has sat through
14 this entire proceeding--and we've been here now on
15 the fifth day--knows that you can't do justice in
16 the media, you can't do justice on sound bites.
17 The way to arrive at a determination of the facts
18 is to hear in a fair and open proceeding all of
19 the evidence, and then for the trier of fact to
20 determine what the facts are. And we've done that
21 this week. That did not happen and was not going
22 to happen, apparently, in the Duke Lacrosse case.

23 The justice system righted itself
24 somehow so that at the end of the day there was
25 indeed a declaration of innocence of these three

1 young men. But it was done with backup systems in
2 a way that was never designed to work as the
3 justice system should work.

4 Perhaps that was set in motion by the
5 State Bar's initial complaint filed on December
6 28, 2006, that shortly thereafter led to the
7 recusal of Mr. Nifong from the Duke Lacrosse
8 cases. That was a controversial decision, I
9 believe. It was certainly unprecedented that the
10 State Bar would take disciplinary action against a
11 prosecutor during the pendency of the case, when
12 indeed the presiding judge had concurrent and
13 coextensive disciplinary jurisdiction. That was a
14 step--although we were not privy to the decision
15 to do that--I am sure that was a matter of serious
16 debate as to whether to do that, because that in
17 itself took the justice system off track.

18 The other mechanism by which the system
19 more or less righted itself was the involvement of
20 the Attorney General and the special prosecutors,
21 who looked at it from the standpoint of
22 prosecutors who were cognizant of their duty, the
23 duty that was described here by Marsha Goodenow
24 from the Mecklenburg County District Attorney's
25 Office, and whom we found to be a very persuasive

1 witness. And that led to something really very
2 extraordinary, a declaration of actual innocence
3 of the three defendants, something that could
4 never have been accomplished even if the criminal
5 case had proceeded before Judge Smith. And while
6 we don't know, it seems reasonably clear that one
7 would predict that at the suppression hearing in
8 February the case would have been dismissed. But
9 it would have been dismissed with no declaration
10 of innocence, and, indeed, this entire controversy
11 regarding the wrongful prosecution still hanging
12 over the heads of the defendants and of the
13 justice system in North Carolina.

14 So perhaps that was the good thing that
15 happened, if one can find much of anything good
16 out of this situation. But the fact that if these
17 extraordinary circumstances had not come to pass
18 leading to that declaration of innocence raises
19 another point that we should all be aware of,
20 which is that the person who is the most powerful
21 in the criminal justice system is not the judge,
22 and except at the end of the process, it's not the
23 jury. It's the prosecutor who makes the charging
24 decision to start with.

25 The prosecutor, as any defense lawyer

1 will tell you, is imbued with an aura that if he
2 says it's so, it must be so. And even with all of
3 the Constitutional rights that are afforded
4 criminal defendants, the prosecutor, merely by
5 asserting a charge against defendants, already has
6 a leg up. And when that power is abused, as it
7 was here, it puts Constitutional rights in
8 jeopardy. We have a justice system, but the
9 justice system only works if the people who
10 participate in it are people of good faith and
11 respect those rights.

12 And Mr. Nifong, it must be said, for
13 whatever reason, it does appear to us to be out of
14 self-interest, and self-deception, not necessarily
15 out of an evil motive, but that his judgment was
16 so clouded by his own self-interest that he lost
17 sight of that and wandered off the path of
18 justice. And it had to be put back on course
19 again by, again, very extraordinary means.

20 This is also a case where due to the
21 initial strong statements, unequivocal statements,
22 made by Mr. Nifong there was a deception
23 perpetrated upon the public, and many people were
24 made to look foolish, because they simply accepted
25 that if this prosecutor said it was true, it must

1 be true. We all think back to those early days in
2 the Spring of last year, and you think of how
3 public opinion was so overwhelmingly against these
4 defendants. And you think of the public
5 approbation that they suffered, and then you look
6 as to how the truth came out, slowly, in small
7 increments. And look at the situation now as to
8 what public opinion is. It is a 180 degree turn.
9 And those who made a rush to judgment based upon
10 an unquestioning faith in what a prosecutor had
11 told them were made to look foolish, and many
12 still do look foolish.

13 It is very difficult to find any good in
14 this situation that brings us here. I can only
15 think of a couple of things. One is that there
16 are very few deterrents upon prosecutorial
17 misconduct. For very good policy reasons,
18 prosecutors are virtually immune from civil
19 liability. About the worst that can happen to
20 them in the conduct of a case is for the case to
21 be overturned. The only significant deterrent
22 upon prosecutors is the possibility of disciplinary
23 sanction. And here the most severe sanction is
24 warranted.

25 I want to briefly address a matter that

1 was actually included in Mr. Nifong's initial
2 Response to the State Bar Grievance, which was to
3 the effect that the word on the street was that
4 the State Bar was out to get a prosecutor, and
5 citing a couple of well-publicized cases in recent
6 years involving prosecutors, where it was widely
7 perceived that there was insufficient discipline
8 imposed.

9 And I just want to step back for a
10 moment and speak not as the Chair of this Panel,
11 but as the Chair of the Disciplinary Hearing
12 Commission and note that in those two cases the
13 situation was very different, although you could
14 look at it and say the harm that was caused by the
15 conduct was greater. In both of those cases
16 someone was actually wrongfully convicted of a
17 capital crime. But in one of those cases, when it
18 was prosecuted, there was no contention that there
19 was any misconduct on behalf of the prosecutor
20 that extended beyond gross negligence. In other
21 words, there was no allegation or proof of
22 intentional wrongdoing. And under the
23 restrictions that we are under in the case of
24 State Bar versus Talford, probably the maximum
25 discipline that could be imposed was imposed. And

1 indeed, under the particular provision, the same
2 one that we are dealing with here, Rule 3.8(d) as
3 it was previously worded, the Panel held that
4 there was a non-delegable duty to know what's in
5 your file, and that under most jurisdictions or
6 the majority view, actually no discipline would be
7 imposed.

8 In the other case, which has recently
9 been affirmed by the Court of Appeals, there was a
10 dismissal based upon essentially the running of the
11 limitations rule. And we did not address the
12 merits. But we applied the rules.

13 We applied the rules in both of those
14 cases and reached, in my opinion, the correct
15 result, and in this case we have applied the rules
16 and again we believe we have reached the correct
17 result.

18 And every case is different, but the
19 case we have here is a clear case of intentional
20 prosecutorial misconduct.

21 So in addition to this being a deterrent
22 to any prosecutorial misconduct, I would say that
23 this should be a reminder to everyone that it's
24 the facts that matter. It's not the allegations.
25 And if you sit as a juror or if you sit at home

1 watching your television about court proceedings,
2 you have to carefully consider the facts and the
3 evidence before you make the conclusion about
4 something, and not just trust someone who tells
5 you it is so because that is someone in a position
6 who is supposed to know.

7 The other thing that may be good about
8 this is to say this is another opportunity to
9 acknowledge based upon the actual testimony that
10 we have heard over the last several days, and to
11 remind everyone, other than the testimony of Brian
12 Meehan on December 15, 2006, no one had given
13 testimony in a public hearing under oath in this
14 matter until this week. This has given an
15 opportunity to air some, though not all, of the
16 evidence that may relate to this matter. After
17 all, our purpose is limited to the disciplinary
18 matter before us and the specific allegations and
19 only involves the law license of Michael Nifong.
20 But we've had an opportunity over the last several
21 days to hear additional evidence, and while it is
22 really not within the purview of the Panel to make
23 such a pronouncement, I want to say again that we
24 acknowledge the actual innocence of the
25 defendants, and there is nothing here that has

1 done anything but support that assertion.

2 Finally, I want it to be noted--it may
3 seem to be a subtle distinction--but it's an
4 important one. It relates to this underlying
5 case, which is, when this is reported, it should
6 be noted not that the State Bar disciplined
7 Michael Nifong, but that the Disciplinary Hearing
8 Commission of the North Carolina State Bar,
9 particularly this Panel of the Disciplinary Hearing
10 Commission, disciplined Michael Nifong. That is
11 important because it should illustrate to everyone
12 that there has been a process here. The State Bar
13 in secret did not decide to take away the license
14 of Michael Nifong to practice law. The State Bar
15 decided that they had evidence sufficient to go
16 forward and seek to prove to an independent
17 tribunal of triers of fact that his license should
18 be taken away. And it took a long process,
19 culminating to this point in order to do that.
20 And that's due process, and that's what was nearly
21 hijacked in the case of the Duke Lacrosse
22 defendants.

23 That is about the only thing--those are
24 the only things that come to mind that are good
25 about this entire situation. It's been truly

1 a--"fiasco" is not too strong a word. But it
2 could have resulted from a lapse of character of
3 practically anyone, not just in particular Mike
4 Nifong. We've heard anecdotal evidence of the
5 harm that it has caused. The actual harm is very
6 difficult for one to get one's arms around. But I
7 certainly hope that this process will help assuage
8 the harm and stop the ripples that seemed to start
9 when the stone was thrown in the pond. They just
10 got bigger and bigger. But hopefully they will
11 ebb from this point forward.

12 We expect to enter a written order in
13 the near future. I won't put a timetable on it.
14 It will take a little time. But again, that will
15 be a final order, and I understand the Defendant
16 has waived his right to appeal. So unless there's
17 anything further for us to address, this
18 proceeding is concluded. Thank you.

19 (End of excerpt transcript.)

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Michael B. Nifong, 06/16/07
STATE OF NORTH CAROLINA
COUNTY OF WAKE

CERTIFICATE

I, Carol Williams Wolff, Certified Verbatim Reporter and Notary Public for the State of North Carolina, County of Wake, do hereby certify that the foregoing pages represent an excerpt transcript of the hearing held June 16, 2007, in the matter of The North Carolina State Bar versus Michael B. Nifong held before a Hearing Panel of the Disciplinary Hearing Commission of The North Carolina State Bar, and that these pages constitute a true and accurate transcript of an excerpt of the proceeding.

In witness whereof, I have hereunto affixed my hand this 19th day of June, 2007.

CAROL WILLIAMS WOLFF
Certified Verbatim Reporter
Notary Number 19941540100

